IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc 537-MA of 2006 (O&M)

Date of decision: 14.11.2006

Punjab State Warehousing Corporation, Chandigarh …Applicant

Versus

M/s New Kissan Rice Mills & anr …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR, ACTING CHIEF JUSTICE.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr Karminder Singh, Advocate, for the applicant.

Cr Misc 58652 of 2006

The applicant-Punjab State Warehousing Corporation ('Corporation' – for short) has sought condonation of 345 days delay in filing the application for the grant of leave to appeal against the order dated 28.7.2005 passed by the learned Judicial Magistrate Ist Class, Ferozepur. In terms of the said order, respondent-1 – M/s New Kissan Rice Mills through its partner, Sukhminder Singh has been acquitted of the charge under Section 138, of the Negotiable Instruments Act, 1881 (Act – for short).

It is submitted that the applicant-Corporation had filed another Criminal Misc petition i.e. Cr Misc 13935-M of 2006 against the order dated 28.7.2005 passed by the learned Judicial Magistrate Ist Class, Ferozepur acquitting respondent-1. The said petition was disposed of as withdrawn by this Court with liberty to the applicant-Corporation to file an appropriate petition, if so advised. It was observed that in view of the specific provisions of Section 378(4) of the Code of Criminal Procedure ('CrPC' – for short) which permits the

complainant to file application for the grant of leave to appeal from an order of acquittal, the learned counsel for the applicant prayed for withdrawing the petition so as to avail the said remedy.

Learned counsel for the applicant has submitted that in fact the application under Section 378(4) CrPC was to be filed, however, a wrong procedure had been adopted in the earlier Criminal Misc petition, which has resulted in delay of 345 days. The said delay, it is contended, is not intentional. The application seeking condonation of delay is supported by an affidavit.

In view of the aforesaid position, we find sufficient ground to condone the delay of 345 days in filing the application seeking leave to appeal against the order dated 28.7.2005 passed by the learned trial Magistrate.

Accordingly, the Criminal Misc application seeking condonation of delay is allowed and the delay in filing the application for the grant of leave to appeal is condoned.

Criminal Misc 537-MA of 2006

The applicant-Corporation filed a criminal complaint under Section 138 of the Act on account of cheque dated 20.10.1996 for a sum of Rs 10.00 lakhs drawn on State Bank of India, Ferozepur Cantt by respondent-1 in favour of the Corporation being dishonoured. Respondent-1 was summoned by the trial Magistrate after preliminary evidence. In order to prove its case, the applicant-Corporation, who was the complainant examined Janak Raj, Godown Assistant, Punjab State Ware Housing Corporation, Ferozepur. In his cross-examination, it was deposed by him that the complainant-Corporation had obtained the cheque as security towards loan. Besides, it was stated that as on the date of issuance of the cheque, the accounts were not settled inter se between the parties, arbitration matter was still pending and no specific amount could be said to have been due against the accused. The said witness had also admitted that the amount of paddy

for the embezzlement of which the cheque in question was issued by respondent-1, had been received by the complainant-Corporation, though subsequent to the filing of the complaint. Janak Raj who had appeared on behalf of the complainant-Corporation having specifically admitted that the cheque was issued as a security towards the loan, it is to be taken that it was not issued by respondent-1 towards discharge of any debt or liability of the complainant-Corporation. The burden of proving non-existence of any debt or liability is on the accused and is to be discharged by it during trial. The said burden has, however, been duly discharged with the admission made by the complainant's own witness. Besides, it has been stated by the complainant's witness – Janak Raj that on the date of issuance of the cheque, the accounts were not settled and arbitration was pending and no specific amount could be said to be due against the accused. This was taken by the learned trial Court to mean that it was an un-ascertained amount. In the circumstances, the learned trial Court has rightly concluded that the cheque in question having been issued as security, the dishonour of the same would not make out an offence under Section 138 of the Act.

The authority letter (Ex P4), which authorized the filing of the complaint was also considered and it was observed that it did not appear to be in consonance with the necessary legal requirements of law. Reliance has been placed on a decision of this Court in ***Meeta Rai v. Gulshan Mahajan*** 1999(2) Civil Court Cases 553 wherein the payee had been authorized by her husband through a letter to file a complaint on her behalf. The authority letter did not state that the payee would be bound by the acts of her husband. It was held that the authority letter could not be equated with general or special power of attorney and the complaint was held to be not properly instituted. The learned counsel for

the applicant, in the case in hand, has also not been able to show that the authority letter (Ex P4) was legal and valid and the same did not suffer from any defect.

For the fore going reasons, there is no merit in this application for the grant of leave to appeal against the judgment and order dated 27.7.2005 of the learned trial Magistrate and consequently leave to appeal is declined.

(S.S.NIJJAR)
ACTING CHIEF JUSTICE

14.11.2006. (S.S.SARON)
ASR JUDGE